

**Date:** April 11, 2012

**To:** Thomas J. Bonfield, City Manager  
**Through:** Theodore L. Voorhees, Deputy City Manager  
**From:** Joel V. Reitzer, General Services Director  
Kevin Dick, Office of Economic and Workforce Development Director  
**Subject:** Agreement to Rescind Proposed Lease of Parking Spaces in the North Garage

### **Executive Summary**

Prior to November 3, 2008, American Campus Operating Company, LLC ("ACOC"), a North Carolina limited liability company, submitted to the City an offer to lease a number of parking spaces in the City's North Garage at 305 Pettigrew Street, Durham, NC. The proposal included a term of fifteen (15) years with an option to renew for a five-year term (the "Proposed Lease"). ACOC paid a required deposit to the City in the amount of \$88,047.00 in connection with its offer to enter into the Proposed Lease. After receipt of this offer, the City Council adopted, on November 3, 2008, Resolution 9611 authorizing the Proposed Lease through the upset bid procedure of NCGS §160A-269. Said resolution is entitled, "Resolution Authorizing Upset Bid Process to Lease Parking Spaces in North Garage to American Campus Operating Company, LLC."

Subsequent to the expiration of the time period for any qualifying upset bids to be received, the City and ACOC did not execute a lease agreement and effectively agreed not to finalize or execute a lease agreement for the spaces described in the Proposed Lease. Since that time, City Council has authorized execution of a more comprehensive lease of parking spaces at the North Garage with American Campus, LLC, a limited liability company affiliated with ACOC. By executing the attached Agreement to Rescind Proposed Lease of Parking Spaces in the North Garage, the City and ACOC will memorialize, ratify, and confirm that the Proposed Lease was never finalized, that all rights or obligations, if any, of the City and ACOC pursuant to the Proposed Lease are rescinded, and that the \$88,047.00 deposit will be returned to ACOC.

### **Recommendation**

The General Services Department and the Office of Economic and Workforce Development Department recommend that City Council authorize the City Manager to execute the Agreement to Rescind Proposed Lease of Parking Spaces in the North Garage.

### **Background**

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### **Issues and Analysis**

ACOC paid a deposit toward a parking lease with the City. The \$88,047.00 deposit is being returned to ACOC because the parties have not and will not be entering into the Proposed Lease for which the deposit was given to the City.

### **Alternatives**

The City could decide to not execute the Agreement to Rescind Proposed Lease of Parking Spaces in the North Garage and to not return to ACOC its deposit of \$88,047.00. This option is not in line, however, with the parties' apparent agreement to not execute the Proposed Lease 3 ½ years after it was approved by City Council. It is also not in line with City Council's authorization to execute a more comprehensive lease of parking spaces at the North Garage with an affiliate of ACOC.

### **Financial Impact**

There is no financial impact.

### **SDBE Summary**

This item does not require review by the Equal Opportunity/Equity Assurance Department.

### **Attachments**

Agreement to Rescind Proposed Lease of Parking Spaces in the North Garage